

JOSHUA BRALTS, AXEL BRALTS,	:	
and CARIN BRALTS,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	DECISION
NEW JERSEY STATE INTERSCHOLASTIC	:	
ATHLETIC ASSOCIATION,	:	
	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Petitioning parents and son Joshua sought stay of the NJSIAA's determination that Joshua was ineligible to participate in interscholastic contests (basketball) by application of Article V, Section 4J (eight semester rule). NJSIAA contended Joshua was in his fifth year of high school in that he repeated tenth grade when he was living in Florida. Joshua was eligible to participate in interscholastic basketball during his past four years of high school, but elected not to play during his first tenth grade year.

Commissioner concluded that Joshua was afforded the due process to which he was entitled and that the Eligibility Appeals Committee's determination was not arbitrary, capricious or unreasonable so as to warrant the Commissioner's intervention as Joshua's repetition of tenth grade was not due to circumstances beyond his control, but rather was a result of petitioners' voluntary actions, thus, rendering Joshua ineligible for a waiver of the eight semester rule. Thus, the Commissioner affirmed the NJSIAA's decision. Petition was dismissed.

February 6, 1998

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For Petitioners Joshua, Axel and Carin Bralts, *pro se*

For Respondent NJSIAA, Herbert, Van Ness, Cayci and Goodell
(Steven P. Goodell, Esq., of Counsel)

This matter has come before the Commissioner of Education by way of a Petition of Appeal and Motion for Emergent Relief filed by petitioners on January 12, 1998, seeking a stay of the determination of the New Jersey State Interscholastic Athletic Association (NJSIAA) that Petitioner Joshua Bralts (Joshua) is ineligible to participate in interscholastic athletic contests by application of Article V, Section 4J of the NJSIAA bylaws, the eight semester rule, which precludes eligibility of a student for high school athletics after the expiration of eight consecutive semesters following his entrance into ninth grade. (*NJSIAA Handbook, 1997-98*, at p. 44)

Respondent NJSIAA submitted its Answer and Reply Brief on January 23, 1998, together with the record of proceedings before NJSIAA.

Petitioners also faxed two subsequent submissions on January 23, 1998 and January 28, 1998, with no indication of proof of service upon adversary. In that no provision for

additional submissions was made in the briefing schedule sent to the parties on January 13, 1998, these were not considered in the rendering of the within decision.

The undisputed facts reveal that Joshua is in his fifth year of high school at Mt. Olive High School (Mount Olive) in that he repeated tenth grade when he was living in Florida. Joshua stands at six feet seven inches tall and has been characterized as an excellent player who would be starting this season on the Mount Olive's Boys' Varsity Basketball Team if he were allowed to compete. Joshua was eligible to participate in interscholastic basketball during his past four years of high school, playing in ninth grade, his second tenth grade year, and in eleventh grade, having elected not to play during his first tenth grade year. He now seeks to play in his senior year. Joshua was advised by school officials in Mount Olive that unless NJSIAA granted him a waiver from its eight semester rule, he would be ineligible to participate in interscholastic competition this year.

Mount Olive and petitioners requested a waiver of the eight semester rule before the NJSIAA's Eligibility Committee (EC) which was denied on November 10, 1997. A hearing was held on December 10, 1997, before the NJSIAA Eligibility Appeals Committee (EAC), under the provisions set forth in the *NJSIAA Handbook*. In its determination letter dated December 18, 1997, NJSIAA denied the waiver, rendering Joshua ineligible to compete in high school sports, finding that "the extension of this student's high school career was a voluntary act."

Upon review, the Commissioner finds that the record herein is sufficient to establish, independent of the issue of emergent relief, that the NJSIAA's determination was not arbitrary, capricious or unreasonable. Therefore, the Commissioner has determined to decide this matter on its merits and uphold the decision of the NJSIAA.

In moving papers, petitioners seek emergent relief to allow Joshua to participate in interscholastic athletic competition, a reversal of the NJSIAA's decision and granting of a waiver of the eight semester rule so as to allow Joshua to participate in competitive basketball in his senior year.

Petitioners assert that their decision for Joshua to repeat tenth grade was based on legitimate educational and social considerations and that there was no intention whatsoever to advance his athletic career by keeping him back in tenth grade. They further contend that Joshua's circumstances, causing him to relocate eight times in nine years due to his mother's job

situation, were “Truly Extraordinary circumstances” beyond Joshua’s control. (Petition of Appeal) Therefore, petitioners state that they acted in Joshua’s best interests to slow his secondary schooling down by a year. (Cover Page, Petition of Appeal) Further, they aver that NJSIAA has acted contrary to its own Interpretive Guidelines which provide that waivers may be granted for circumstances beyond the student’s control. They observe that in the past the NJSIAA has granted 30 or more exceptions from the eight semester rule, including waivers for reasons other than clearly demonstrable physical or mental disability and that no showing has been made that some of those students were more deserving of waiver than the instant petitioner. Further, based on the granting of these other exceptions, they contend that the NJSIAA’s denial of a waiver to Joshua is arbitrary, capricious and unreasonable.

Lastly, they point out that the decision for Joshua to repeat the tenth grade was not “Solely Discretionary” in that Joshua did not have enough credits to move to the next grade level. They attach an exhibit to demonstrate that Joshua had 27.5 credits but that he needed 29 credits to progress. (Petition of Appeal, para. 4)

In its response papers, NJSIAA sets forth arguments to demonstrate that petitioners cannot meet the standards which would allow for the granting of emergent relief. *Crowe v. DeGioia*, 90 N.J. 126 (1982). NJSIAA asserts that participation in extracurricular activities is not a fundamental right and Joshua’s ineligibility therefrom would not amount to irreparable harm. (NJSIAA’S Brief at pp. 7-8)

In arguing that petitioners are unlikely to succeed on the merits of their claim, NJSIAA explains the eight semester rule is aimed at prohibiting “redshirting,” a practice of holding a student back to allow him an extra year to mature or to save a talented athlete for another season, and preventing students who are not meeting academic standards from replacing students who are maintaining their academic standards. Waivers of the eight semester rule are only granted when a student has had to continue schooling beyond the eight semesters because of circumstances beyond his or her control. Waivers are not granted where the decision to attend high school for more than four years was voluntary. (*Id.* at pp. 8-9)

NJSIAA observes that the Commissioner has reviewed and upheld the Association in its interpretation and application of the eight semester rule eight times in the past fifteen years, citing two cases, similar to the present, which involved a student repeating a grade because of an

ill-timed move. See *Deborah E. Peveler v. NJSIAA*, decided December 5, 1994 and *Eugene Bradford v. NJSIAA*, 93 N.J.A.R. 2d (EDU) 165 (1993). It alleges that Joshua received full and fair due process before the NJSIAA comprised of two separate committees of educators, the EC and the EAC, when each convened to consider petitioners' request for a waiver from the Association's eight semester rule. In actuality, the EAC held a hearing at which petitioners were permitted to present evidence and witnesses and be represented by counsel if desired. Both the EC and the EAC determined that this student was not a victim of circumstances that were beyond his control. (NJSIAA's Brief at p. 13) There is no evidence that Joshua was required to miss school due to hospitalization, medical illness, to attend to a sick family member, or for any other reason beyond his control. (*Id.*)

As to petitioners' argument that Joshua lacked the requisite credits to progress to eleventh grade so that their decision was not "Solely Discretionary," NJSIAA responds that the test for determining whether a waiver of the NJSIAA eligibility rules should be granted is whether the student was unable to comply with the rules due to circumstances beyond his control. Here, it found the decision to repeat tenth grade was a voluntary one made by Joshua and his parents. (NJSIAA's Answer, para. 4)

FINDINGS AND CONCLUSIONS

The NJSIAA is a voluntary association. The Commissioner's scope of review in NJSIAA determinations is an appellate one. *N.J.S.A. 18A:11-3; Board of Education of the City of Camden v. NJSIAA*, 92 N.J.A.R. 2d (EDU) 182, 188. The Commissioner may not overturn an action by the NJSIAA in applying eligibility rules absent a finding that the Association applied the rules in a patently arbitrary, capricious or unreasonable manner. *BC v. Cumberland Regional School District*, 220 N.J. Super. 214, 231-232 (App. Div. 1987). Further, the burden of proof that an action was so deficient rests with the person challenging the decision. *Kopera v. West Orange Board of Education*, 60 N.J. Super. 288, 297 (App. Div. 1960). It must be stressed that the Commissioner's scope of review is limited in that he may not substitute his judgment for that of the Association, even when he might judge otherwise in a *de novo* review. *Dam Jin Koh and Hong Jun Kim v. NJSIAA*, 1987 S.L.D. 259. Such point is underscored in the present matter where petitioners present a compelling argument as to why their relocations amounted to truly extraordinary circumstances warranting waiver of the rule in describing their eight moves in nine

years, how these may have effected Joshua's academic progress, and that these academic concerns colored their decision to have Joshua retained in tenth grade.

Nonetheless, the Commissioner is satisfied that NJSIAA did not act arbitrarily or unreasonably when it concluded, on the basis of the record before it, that Joshua's repetition of tenth grade was not due to circumstances beyond his control, but rather was the result of petitioners' voluntary actions, thus, rendering Joshua ineligible for a waiver of the eight semester rule. Moreover, in determining to uphold the determination of the NJSIAA, the Commissioner recognizes the importance of the eight semester rule as it is designed to prevent athletic advantage for older, larger students and the displacement of otherwise eligible students by those who have already had a full opportunity to participate in interscholastic athletics. The Commissioner also appreciates NJSIAA's concern for fairness to the opposing teams whose athletes meet all eligibility standards.

Accordingly, petitioners not having met their burden of establishing that in denying their request for waiver the NJSIAA acted arbitrarily, unreasonably, in bad faith or contrary to law, the Commissioner upholds the NJSIAA's decision and dismisses the Petition of Appeal.

COMMISSIONER OF EDUCATION

February 6, 1998